Editor's note: Appealed -- dismissed, Civ. No. F-74-6 (D.Alaska Jan. 5, 1977)

JOHN J. SEXTON (ON RECONSIDERATION)

IBLA 74-93
74-97

Decided May 7, 1975

Petition for reconsideration en banc of John J. Sexton, 15 IBLA 69 (1974).

Petition granted; decision reaffirmed.

1. Administrative Practice -- Rules of Practice: Generally -- Rules of Practice: Appeals: Effect of

   A Bureau of Land Management State Office may reconsider one of its decisions prior to the filing of an appeal in the case, but the filing of an appeal terminates that authority.

2. Administrative Prsactice

   A person who drafts and submits an agreement to this Department must bear the burden of any ambiguity in the document if the Department's interpretation is reasonable.

3. Oil and Gas Leases: Applications: Generally -- Oil and Gas Leases: Relinquishments

   The unilateral mistake of an oil and gas lease offeror in withdrawing his offer does not relieve him of the consequences of the withdrawal, which is, that the offer is terminated when the Bureau of Land Management receives the withdrawal.

4. Administrative Practice -- Oil and Gas Leases: Relinquishments

An original letter is not needed to withdraw a lease offer. The requirements are that the withdrawal is properly filed and the person making the withdrawal is properly identified.

5. Administrative Practice

A person signing an assumed name is responsible just as if he signed his own name.

APPEARANCES: Max Barash, Esq., for First National Bank of Fairbanks; Clem Stephenson, Esq., for John J. Sexton.

OPINION BY ADMINISTRATIVE JUDGE THOMPSON

First National Bank of Fairbanks has filed a petition for reconsideration en banc of John J. Sexton, 15 IBLA 69 (1974), alleging that the Sexton decision is erroneous, improper, unjust and does incalculable damage to the Bank. Sexton has joined in the request. Therefore, we grant the petition for reconsideration en banc, 43 CFR 4.21(c), but reaffirm the Board's prior decision.

The process leading to this petition began on May 31, 1973, when the Alaska State Office, Bureau of Land Management (BLM), received copies of three documents signed by John J. Sexton, all dated May 25, 1973: an Oil Lease Security Agreement; a letter marked Exhibit II directing BLM to return Sexton's advance rental deposits on oil and gas lease offers to First National Bank of Fairbanks if either BLM rejected these offers, or if Sexton withdrew them; and a letter from Sexton to BLM withdrawing 30 oil and gas noncompetitive lease offers. Although Sexton signed the documents, the Bank apparently mailed them. 1/ The lease offers involved are listed in John J. Sexton, supra, at 69 n. 1.

On June 6, 1973, the Chief Adjudicator for the Alaska State Office refused to accept the withdrawals for lease offers AA-3522, AA-3521 and AA-3962, because those withdrawals were not signed by all the offerors. On June 28, 1973, the Chief Adjudicator refused to refund advance rentals for lease offers AA-3958, AA-3961 and

1/ In our original decision we stated that Sexton "sent" a withdrawal letter. The statement could have been more artfully drafted to reflect the Bank's participation in the dispatch of the letter. At that time we were aware of the Bank's position that an employee had erroneously sent the withdrawal letter.

AA-3572, on the grounds that the offers had previously been withdrawn and the rentals refunded. Those decisions were sent to Sexton. Sexton did not protest or appeal either of these decisions. Similarly, on August 6, 1973, the Chief Adjudicator refused to refund the advance rentals for F-3704, F-3772 and F-3773, because the offers had been withdrawn and rentals had been previously refunded and F-7137, F-7138 and F-7930, because the withdrawals were not signed by all the offerors. By the August 6, 1973, decision, refunds of the advance rental deposits were authorized for 18 lease offers.

In response to this latter decision, on August 15, 1973, a letter signed by an officer of the Bank and approved by Sexton was sent to the Chief Adjudicator for Alaska in effect requesting that the decision, which authorized refunds of the advance rental deposits, be reversed. The Bank contends the State Office treated this letter as a protest or a petition for reconsideration, and refers to correspondence or telephone communications regarding it. The original case record before the Board did not contain any notation of these communications. According to the Bank, on August 22, 1973, after discussing the procedure with the Bank, the State Office asked the Regional Solicitor to determine whether the decision was correct, and told the Bank that this request had been made. On September 5, 1973, attorney Edgar Paul Boyko filed a "notice of appeal" in Sexton's behalf. Thereupon, BLM sent the case file to this Board. Although the "notice" indicated that a statement of reasons for appeal would follow, no other document was filed with the Board. While the petition for reconsideration was pending before the Board, the BLM forwarded a copy of a statement of reasons for appeal that Boyko had prepared and filed with it, but that the BLM had failed to forward. The Bank's attorney states that he did not know about Sexton's appeal until November 19, 1973, when he was notified that BLM had suspended its request for an opinion by the Regional Solicitor because the case had been appealed. 2/

In our original decision, to prevent summary dismissal of the case for failure to file a statement of reasons for appeal, which we did not then have, we "accepted" the August 15, 1973, protest as both a notice and statement of reasons for appeal. 15 IBLA at 70.

2/ The request for an opinion was reinstated at First National's request and unknown to this Board an opinion issued on December 26, 1973. The Regional Solicitor's Opinion approved the State Office decision of August 6, 1973. No action was taken by the Chief Adjudicator on the decision since the case record was at that time in this office.

We decided the case on the substantive ground that Sexton's relinquishment of his lease offers was not involuntary even if "inadvertent" and his withdrawal was effective when filed. Adhering to Departmental precedent that relinquished lease offers may not be reinstated with priority, we refused to reinstate the terminated lease offers. Sexton sought review in the District Court for Alaska. The Bank filed a petition for reconsideration. Sexton has adopted the petition and has filed a stipulation to suspend his suit in the District Court pending our resolution of the petition.

In support of its petition for reconsideration, the Bank now asserts: (1) the Alaska State Office failed to notify the Board of Land Appeals that in response to First National's protest of August 15, 1973, and prior to the transmittal of the notice of appeal, the State Office had requested an opinion from the Regional Solicitor on the propriety of the August 6, 1973, decision; (2) Sexton's notice of appeal was premature since a protest was pending in the State Office; (3) the transmittal of the appeal violated an understanding between First National and Hagens, Chief Adjudicator for Alaska, to withhold making a decision on the protest until after the Regional Solicitor gave his opinion; (4) the Alaska State Office has not acted on the protest; (5) the Board of Land Appeals improperly borrowed the protest of August 15, 1973, as a notice and statement of reasons for appeal; (6) the Board did not have before it the Bank Security Agreement of May 25, 1973,

> * * * and apparently relied upon an Opinion of Regional Solicitor Price dated December 26, 1973, which inexplicably and in contravention of 43 C.F.R. 4.24(a)(4) was not furnished to the Bank prior to its decision of March 5, 1973, [thus] it was error for the Board to render a decision in these circumstances;

and (7) the Board erred when it held "that Xerox copies of a withdrawal letter which was merely an exhibit to the Bank security agreement constituted a valid and voluntary withdrawal of pending oil and gas lease offers." Petition for Reconsideration at 4.

The Bank alleges that the State Office erred by not informing this Board that it had asked the Regional Solicitor for an opinion whether the decision was correct. The record at the time of our March 5, 1974, decision did reflect the request to the Regional Solicitor. In that sense, then, we were "aware" of the request. What we were not aware of was any alleged informal agreement or understanding between Hagens and the Bank to decide the protest on the basis of the Regional Solicitor's opinion or of the informal communications and correspondence between the Bank, the Regional

Solicitor's Office, and BLM State Office. We do not know why the State Office failed to notify us fully, or why the Regional Solicitor did not notify this Board that he was considering the matter, or why he did not enter an appearance in the case. In its petition for reconsideration, the Bank's attorney acknowledged that as of November 19, 1973, he was aware that an appeal was pending before the Board. Notwithstanding, the Bank did not petition to intervene in the pending appeal or to inform the Board of the informal "understanding" it had reached with the State Office official. It was not until over three months after the Bank's attorney became aware of the appeal, and then only after our decision had issued, that the Bank entered an appearance before this Board. We are hard pressed to understand this failure in view of the Bank's present strenuous objections of unfairness. If the Bank had presented its views to us in a more timely fashion, much of the present procedural confusion could have been avoided. Had either Sexton or the State Office taken appropriate action, the case record might have been returned to the State Office for further consideration. E.g., M. P. Roland, 6 IBLA 502 (1972); Village of Tularosa, New Mexico, 6 IBLA 503 (1972). In the present posture of the case we can do no more than consider whether the Bank has shown any substantive reasons which would warrant changing our decision. We do this because Sexton has joined in its petition, but question the Bank's standing to appeal or protest in this matter, as a matter of right. 3/ References to the Bank hereafter shall be deemed to include Sexton.

The Bank argues that we did not have jurisdiction over the case at the time of our prior decision since either the notice of appeal was premature because of the pending request to the Regional Solicitor, or the State Office could have retained jurisdiction over the protest. We do not agree.

3/ The Bank has not asserted the exact nature of its interest in this proceeding. It cannot be recognized as an assignee of the offers since compliance with the regulations for assignment was not made. There is no regulatory authority for recognizing the arrangement entered into by the Bank and Sexton in any way which would bind the Government to act in accordance with the unapproved arrangement. Instead, there is authority that such an arrangement may be repugnant to long standing public policy. See 43 CFR 1822.3-5(f). At most, the arrangement would be recognizable only as a creation of agency by Sexton to the Bank. We are considering the Bank's arguments because Sexton -- the only recognizable party in interest in the offers -- has also adopted them by his agreement with the petition.

[1] First, assuming arguendo, the August 15 letter was a "protest" and not an "appeal," the regulations do not provide that a protest to a State Office decision stays the period in which an appeal may be made. Despite a pending protest, a notice of appeal has to be made timely, i.e., within 30 days of the receipt of the decision, to avoid its summary dismissal. 43 CFR 4.402. The filing of the notice was not premature. Second, although the State Office has the authority to reconsider its decision prior to an appeal to this Board, the filing of an appeal terminates that authority. Any matters relating to the appeal pending before the State Office devolved to the jurisdiction of this Board at the time the appeal was made. Utah Power & Light Co., 14 IBLA 372, 373 (1974); see Humble Oil & Refining Co., 65 I.D. 257, 259 (1958); Ruby E. Huffman, 64 I.D. 57, 59 (1957); 43 CFR 4.1. The State Office ceased to have jurisdiction over the alleged protest when the notice of appeal was filed.

No understanding between Hagens and the Bank could serve to retain jurisdiction in the BLM State Office. Although the State Office may rule on a protest pending before it on the basis of an opinion by the Regional Solicitor, it could not do so once the Departmental appeal processes were invoked. Utah Power & Light Co., supra; Humble Oil & Refining Co., supra; Ruby E. Huffman, supra. Therefore, we reject the Bank's contention that the State Office improperly failed to act on the protest. Since the State Office had no jurisdiction over the case, its failure to decide the protest was not improper.

We turn to the Bank's contention that this Board improperly "borrowed" the August 15, 1973, letter as a notice and statement of reasons for appeal. As stated previously, we took this step to ensure complete and thorough consideration of the case on its merits, and to avoid a summary dismissal of the appeal for failure to file a statement of reasons as required, 43 CFR 4.402.

Contrary to another of the Bank's contentions, we did not rely on the Regional Solicitor's Opinion of December 26, 1973, in our earlier decision. We completed our consideration of the cases prior to receipt of the opinion. The Board received the opinion on February 25, 1974, and placed it in the record. The Bank complains that the Regional Solicitor did not send it a copy of the opinion. We were unaware of that problem as well as the other transactions between that office and the Bank's attorney until after the Bank petitioned to intervene. The failure to receive the document was caused in no small part, however, by the Bank's failure to participate in proceedings before the Board and its apparent insistence in resolving its difficulties in a way other than that provided by Departmental appeal procedures. The Board

did provide the Bank a copy of this opinion prior to its filing the petition for reconsideration.

Because we are giving complete consideration to the Bank's arguments, there can be no prejudice to it.

We turn now to the substantive questions. The Bank's central contention is that our decision in this case is wrong and should be reversed. It contends that the three submitted documents when read together negate any inference that the "appended withdrawal exhibit was intended to be a voluntary withdrawal as of May 25, 1973," and the withdrawal letter was only submitted for "record purposes." This argument is based on the following stated factors: (1) all the documents were executed on the same date; (2) only copies of the withdrawal letter were submitted -- the original was retained by the Bank; (3) the letter of withdrawal was signed "International Hotel and Bar by John Sexton" (International Hotel and Bar is not a corporation or a partnership, but an assumed name under which Sexton does business), but the offers were in John Sexton's name alone; and (4) a reading of the Security Agreement makes it clear that no withdrawal was intended.

[2] We adhere to our original interpretation of the withdrawal letter. Assuming arguendo the necessity to consider the other documents, (but see footnote 3 and infra) the fact that all three of the documents sent to the State Office were executed on the same day neither proves nor disproves the Bank's contentions. It is equally likely that on the same day the agreements were drawn, they were intended to be used. Implementing an agreement at any time after it is made does not make it a "nullity." A person who drafts and submits an agreement to this Department must bear the burden of any ambiguity it creates if the Department's interpretation is reasonable. See Boeing Co. v. United States, 480 F.2d 854 (Ct. Cl. 1973); Chris Berg, Inc. v. United States, 455 F.2d 1037 (Ct. Cl. 1972).

We reject the notion that only the withdrawal letters were considered. The State Office's decision is entirely consistent with a careful reading of all the documents. Also, as early as June 6, 1973, Sexton was aware that the State Office was interpreting the documents as a withdrawal. His failure to protest either the June 6, 1973, decision, or the June 28, 1973, decision demonstrates that Sexton understood and agreed with the State Office's interpretation of the documents, or, at least, at this stage he is estopped to deny their effect.

In any event, a careful reading of the Security Agreement does not support the conclusion that the documents were filed for record

purposes only. Section 2a of the agreement required Sexton to execute and send to the Bureau of Land Management irrevocable directions to return the advance rental deposits for the lease offers to the Bank if certain events occurred. This letter alone would have put BLM on notice that the agreement with the Bank existed. A document containing this information, marked "Exhibit II," was executed by Sexton and received by the BLM on May 31, 1973. Section 2b required Sexton to execute and deposit with the Bank, not BLM, a withdrawal letter for each lease offer in the same form as "Exhibit III" attached to the agreement. BLM received a copy of the withdrawal form on May 31, 1973. It was not marked "Exhibit III." What is the consequence of BLM's receipt of this letter, in view of the requirement in the Security Agreement that Sexton should give a signed copy of the letter to the Bank? What is the role given this document by the Security Agreement?

Section 3d of the agreement authorizes the Bank at its discretion, to activate the refund of the advance rentals by sending a withdrawal letter previously executed by Sexton -- as required in section 2b -- to BLM. According to the agreement, the withdrawal letter would be sent to BLM only if the Bank wanted BLM to refund the advance lease rentals. While the Security Agreement requires the authorization to refund the rentals, Exhibit II, to be sent to BLM for record purposes, it does not require a withdrawal letter to be sent for record purposes. The latter document, according to the agreement, is to be sent by the Bank only when it intends to have the lease offers withdrawn and the advance rental returned. We also note that if the withdrawal letter was being sent for record purposes only, it should not have been dated or executed. In addition, it would have been prudent for Sexton and the Bank to mark the letter of withdrawal as a "specimen copy" or "exhibit," and to have included a cover letter explaining why the documents were being sent, particularly in view of the fact that Departmental regulations do not require the forms to be filed for record purposes. To the extent the documents are unclear or ambiguous, we will construe them against the drafter. Boeing Co. v. United States, supra; Chris Berg, Inc. v. United States, supra. However, even without resort to this rule of construction, the proper inference to be drawn from reading these documents is that when the Bank sent the withdrawal letter to BLM, it intended to withdraw the lease offers.

[3] The best explanation of the circumstances is not that the forms were improperly interpreted by the Department, but that the Bank sent them by mistake. This conclusion is supported by the Bank's President's statement in the August 15, 1973, letter that the letter of withdrawal "was inadvertently attached to the security agreement." (Emphasis added.) We feel this statement, made shortly after the

decision by the Chief Adjudicator for Alaska, is highly probative and supports the conclusion that the error was not of the Department but of the Bank. The Bank tries to distinguish the cases we relied on in our prior decision, Lauren W. Gibbs, 67 I.D. 350, 351-52 (1960); Paul D. Haynes, 66 I.D. 332, 333-34 (1959); Roy W. Reed, 7 IBLA 321, 322 (1972); Thomas F. Kenna, 62 I.D. 376, 379 (1955); Gwen Gaukel, A-29017 (December 14, 1962), on the basis that in those cases the withdrawals were voluntary, while here they were not. This analysis incorrectly assumes the result that the withdrawals here were not voluntary. The filed documents were withdrawals; they were filed by a party authorized by the offeror, and they were not submitted for any record purposes required by the Department. The error, if any, was attributable to Sexton and the Bank. The filing of the withdrawals may have been due to mistake or inadvertence, but it was not involuntary. As we said in our first decision, "[T]he unilateral mistake of an oil and gas lease offeror in withdrawing his offer does not relieve him of the consequences of the withdrawal * * *." 15 IBLA at 71. Under these circumstances, Sexton and the Bank must bear the full brunt of the error. Id. at 71. Sexton is in the same posture as the employer in Lauren W. Gibbs, supra; the error of his agent is attributable to him as the employee's principal.

[4, 5] The Bank's final contention raises the issue whether a copy of a signature which includes an assumed name is an effective signature. The withdrawal letter was signed "International Bar and Hotel by John Sexton." The same signature appeared on the other documents as well, and the Bank's contention would go against BLM recognition of those documents also. The Bank also asserts that a copy of the letter, not the original, was sent to BLM. Neither the lack of an original withdrawal letter nor the signature on the letter, "International Hotel and Bar by John Sexton," are grounds for reversing our decision. An original letter is not needed to have an effective lease offer withdrawal. The only requirement is that the withdrawal is properly filed and the person making the withdrawal is sufficiently identified. See R. C. Bailey, 7 IBLA 266 (1973), aff'd sub nom, Burglin et al. v. United States, Civ. No. F 15-73 (D. Alaska, June 11, 1973), appeal pending; Mary I. Arata, 4 IBLA 201, 203, 78 I.D. 397, 398 (1971); 43 CFR 3108.1. International Hotel and Bar, an assumed name, is not a separate entity from John J. Sexton. Its inclusion in the signature is a matter of form, not substance, and its presence does not bar the effectiveness of the signature. A person signing an assumed name is responsible just as if he signed his own name. See State v. Morse, 38 Wash. 2d 927, 234 P.2d 477 (1961); cases collected at 42 A.L.R.2d 520-21 (1955).

These conclusions are in accord with Alaska law. Alaska is one of the many states that has adopted the Uniform Commercial Code.

Although the Code is not binding here, it does indicate the standard commercial practice in the state. Concerning the liability of signers of instruments, UCC § 3-401, Alas. Stat. § 45.05.320 (1962), provides:

> UCC § 3-401. Signature.
>
> (1) No person is liable on an instrument unless his signature appears thereon.
>
> (2) A signature is made by use of any name, including any trade or assumed name, upon an instrument, or by any word or mark used in lieu of a written signature.

Under this law an identifiable mark serves as a signature. Even where the name signed is fictitious or assumed, if the person making the mark can be identified, the signature is effective. See to the same effect, 43 CFR 1810.1(g). Here, the signature was affixed by copying -- i.e., in any other manner -- and clearly identified John Sexton as the party making the offer. The signature was effective. Copies of signatures have been accepted as giving effect to an oil and gas lease offer, John F. Brown, 16 IBLA 185 (1974), and are also effective for a withdrawal of an offer.

Chief Administrative Judge Frishberg, in his dissenting opinion, would reverse the BLM's decision and find that it acted in a manner that was "unreasonable, arbitrary and highly prejudicial to the Bank." The acts which prompt this conclusion are the BLM's failure to notify the Bank of the June 6, June 28, and August 6, 1974, decisions. The BLM's "failure" cannot, however, change the fact that the withdrawal of the offers was made and they were effective eo instante. (The BLM decisions just referred to do not approve the withdrawals, they recognize they had been made. The only determination BLM made is that the withdrawals were made.) The "missing" notification may have permitted the Bank's argument to be heard sooner; it cannot vitiate the fact that its arguments are to no avail.

With respect to the private agreement between the Bank and Sexton, we emphasize that the Bank has not filed an assignment of the offers to it or otherwise shown any right which this Department is legally obligated to recognize. No authority has been cited, nor do we know of any, whereby BLM must recognize any rights in the Bank under such an arrangement which would legally bind this Department. It has long been held that BLM is not required to give notice of lease requirements or of its decisions to third parties with whom its oil and gas lessees or offerors have made contracts. Agreements between the lessee and a third party cannot create any contractual or other legally obligatory relationship between the United States

and the third party. Harry L. Bigbee, 2 IBLA 23, 27 (1971); Zion Oil Co., 62 I.D. 369, 372-74 (1955); Bert O. Peterson, 58 I.D. 661 (1944), aff'd, 151 F.2d 301 (D.C. Cir), cert. denied, 326 U.S. 795 (1945). While BLM personnel are not precluded from giving courtesy notices, they have no affirmative duty to take extraordinary measures to save an oil and gas lessee from the possible consequences of his negligence and the failure to take such measures does not estop the Government from denying such consequences. Richard V. Bowman, 19 IBLA 261 (1975). A fortiori, private arrangements between oil and gas lease offerors and a bank cannot create an additional obligation which the Government must recognize.

As we have suggested previously, at most we believe this Department would recognize the Bank in this matter as Sexton's agent. In view of what has transpired in this case, however, BLM, as a courtesy, may send any refunds of advance rentals for the withdrawn offers in the name of Sexton, but in care of the Bank. We suggest that it do so when the records are returned to it from this office.

We have reviewed the Bank and Sexton's contentions in some detail and conclude that the previous decision is correct. The Bank's request for an oral argument is denied.

Therefore, pursuant to the authority granted the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision in John J. Sexton, 15 IBLA 69 (1974), is reaffirmed.

Joan B. Thompson
Administrative Judge

We concur:

Martin Ritvo
Administrative Judge

Douglas E. Henriques
Administrative Judge

Edward W. Stuebing
Administrative Judge

I concur in the result:

Joseph W. Goss
Administrative Judge

ADMINISTRATIVE JUDGE FISHMAN DISSENTING:

The question presented by the appeal is whether the Land Office acted properly in treating the copy of the withdrawal letter filed by the Bank as constituting a relinquishment of certain pending oil and gas lease offers.

The Bank lent John J. Sexton, d/b/a/ International Hotel and Bar, the sum of $21,545.84, which was secured by a "Security Agreement" executed May 25, 1973, to which was appended as Exhibits (a) a letter of instructions dated May 25, 1973, from Sexton to the Fairbanks Land Office, designated in paragraph 2a of the Security Agreement as Exhibit II, and (b) a withdrawal letter dated May 25, 1973, from Sexton to the Fairbanks Land Office, designated in paragraph 2b of the security agreement as Exhibit III, to be utilized by the Bank, when deemed appropriate under the terms of the Security Agreement, to withdraw one or more of the pending oil and gas lease applications encompassed thereby.

Copies of the Security Agreement and the attachments were all dated May 25, 1973, and all were filed by the Bank with the Fairbanks Land Office on May 31, 1973. The copy of the letter of withdrawal was not marked Exhibit III. The Alaska State Office construed that copy as constituting an actionable request for the withdrawal or relinquishment of the pending oil and gas lease offers. Whereupon that office issued its letter of August 6, 1973, which in part, treated the copy of the letter as withdrawing the offers in issue.

The Board's decision dated March 5, 1974, states that "[o]n May 25, 1973, John J. Sexton sent a letter to the Alaska State Office, Bureau of Land Management, specifically withdrawing 30 oil and gas noncompetitive lease offers." However, the withdrawal letter was not sent by Sexton. A copy was sent by the Bank along with a copy of the letter of instructions and a copy of the security agreement. The copy did not contain the actual handwritten signature of Sexton. Rather, it was a Xerox copy. 1/ Where an original handwritten signature is submitted together with photostatic copies thereof, all are accepted in land office filings. But a stamped

1/ The withdrawal letter, a copy of which was attached as an exhibit to the security agreement, was signed "International Hotel & Bar by John J. Sexton" to conform with the signature on the security agreement and the signature on the letter of instructions to the Land Office. Any original withdrawal letter submitted to the Land Office subsequent to May 25, 1973, would bear only the signature of John J. Sexton, since International Hotel & Bar was not an applicant for an oil and gas lease.

or otherwise reproduced signature is acceptable only when it is made "with the intent that it should be the signature of the person." Mary I. Arata, 4 IBLA 201, 78 I.D. 397 (1971). Although Sexton apparently intended that his signature on the original should have effect, the same cannot hold true for a Xerox copy of such instrument.

It is obvious that the combination of documents sent to the BLM by the Bank were sent for the specific purpose of informing the BLM of the agreement entered into between Sexton and the Bank. While there is no regulation which specifically requires that such agreements must be filed with the BLM, the clear purpose of the filing was to notify the BLM that the Bank was from that point on an interested party and wished to be apprised of developments pertaining to the offers. Yet when the agreement and the attachments (including the copy of the withdrawal) were filed, the BLM merely plucked the withdrawal from the other documents, which it apparently ignored, and acted immediately upon the withdrawal.

The March 5, 1973, decision holds that a unilateral mistake on the part of an oil and gas offeror in withdrawing his offer does not relieve him of the consequences of the withdrawal, which are that the withdrawal is effective as soon as it is filed. I do not see the unilateral mistake here on the part of the offeror. A Security Agreement and attachments were filed herein. A fair reading of such documents negates the conclusion that the package was intended, eo instante, to operate as a withdrawal of the oil and gas lease offers. It is unreasonable for Sexton and the Bank to enter into the complex "Federal Oil Lease Application Security Agreement" dated May 25, 1973, together with the letters of instruction and withdrawal, and render the whole exercise a nullity on the same day. Exhibit II specifically negates the operation of the package as a relinquishment stating:

> The undersigned, applicant(s) for a Federal Oil and Gas Lease on the lands above described on file in your serial number above described, do, for consideration irrevocably direct that your office return the advance lease deposit by issuing and delivering your check therefore by mailing or delivering the same to the First National Bank of Fairbanks, Alaska, Main Office, if and when said funds become returnable by:
>
> (a) final decision rejection the above-noted application; or
>
> (b) withdrawal by the undersigned of said application;

These directions shall not be construed to be a withdrawal of said funds, or said application; and said

> funds shall be retained in their present status by you, and available as funds to be the first year's rental upon issuance of a lease, absent subsequent withdrawal of the application by the undersigned.
>
> International Hotel & Bar
>
> by: John J. Sexton (sgd)
> Applicant

[Last emphasis added.]

I would find that a mistake was made by the BLM in its interpretation of the documents filed by the Bank. While the Bank may have acted unwisely by filing all the documents with the BLM without further explanation and by failing to label the copy of the withdrawal letter Exhibit III, the BLM also acted unwisely in canceling the offers. In light of the other documents filed concurrently, I believe the BLM erred in its interpretation of the copy of the withdrawal. At the very least, the BLM personnel should have questioned the effect of the copy of the letter of withdrawal. The Security Agreement clearly described certain Exhibits. The copy of the letter of instructions was marked Exhibit II and met the description of that exhibit. The copy of the letter of withdrawal, although not marked Exhibit III, clearly met the description of that exhibit. No other copies were filed. A simple phone call to either Sexton or the Bank would have resolved the matter without this consequent protracted procedure. While the BLM has no explicit duty to act in such a manner, it seems to me that such matters dictate a common sense approach.

For the above-stated reasons, I would grant the petition for reconsideration, reverse the prior decision and order reinstatement of the lease offers.

Fredrick Fishman
Administrative Judge

I concur:

Newton Frishberg
Chief Administrative Judge

CHIEF ADMINISTRATIVE JUDGE FRISHBERG DISSENTING:

I concur with Judge Fishman's dissent. I do not believe BLM was reasonable in acting upon the copy of the withdrawal letter. However, even if it was reasonable in acting in response thereto, its actions - or failure to act - were unreasonable, arbitrary and highly prejudicial to the Bank.

Copies of the Security Agreement, the letter of instructions and the letter of withdrawal were all dated May 25 and filed by the Bank with BLM on May 31. They were filed together. In each letter, pursuant to the Agreement, BLM was clearly and expressly instructed by Sexton to return his deposits to the Bank upon rejection or withdrawal of the offers. Ignoring those express directions, BLM informed only Sexton on June 6, June 28, and August 6 of its actions in response to the letter of withdrawal. Had it notified the Bank on June 6 or June 28 of its actions, the Bank would have been in a position to inform BLM that it did not intend to withdraw the offers, thus clarifying matters well before BLM's letter decision of August 6 authorizing refunds for 18 lease offers, which decision is the object of this appeal.

The pivotal question, then, even assuming BLM was reasonable in acting upon the letter, is whether BLM was reasonable in failing to inform the Bank of its responses to the letter of withdrawal. I think not.

One possible reason for BLM's failure to inform the Bank is the strange theory advanced by the majority and implicitly ascribed to the Bureau that the Bank was acting as Sexton's agent. But this defies logic. Pursuant to the Security Agreement Sexton pledged the lease advances as security to the Bank for its not calling its loans to him, which loans were made to enable him to make advance lease rental deposits. As between Sexton and the Bank, the latter was given authority in its sole discretion to foreclose upon those advances. In essence, the Bank owned a chose in action, i.e., the foreclosure right. The purpose of such foreclosure right was to protect the Bank, not Sexton. I do not understand how the Bank can be considered Sexton's agent in exercising that right.

Nor can it be advanced in explanation of the Bureau's failure to inform the Bank of its actions that it relied not upon the Security Agreement but only upon the letters of withdrawal and instruction. Both letters provided expressly and unequivocally that BLM was to return its check covering the deposits to the Bank. While both letters were signed by Sexton, the letter of instruction was also signed, as acceptee, by the Bank.

Concededly, the Bank contributed to the problem by neglecting to mark the copy of the withdrawal letter as Exhibit III. But this was its only contribution. 1/ BLM, on the other hand, ignored the Agreement or failed to understand it, ignored the directions in the letters of instruction and withdrawal, and continuously treated the deposits as still belonging to Sexton instead of to the Bank. 2/ So does a majority of this Board. (See fn. 3 of the majority's decision).

The majority's "suggestion" that BLM return the refunds to Sexton, care of the Bank, "as a courtesy" underlines its mistaken belief that Sexton still owns the deposits. Even assuming that the majority is correct and Sexton is the owner, anything less than an order to return them to the Bank indicates that BLM, with the approval of this Board, is at liberty to respond to one direction in the letter of withdrawal and ignore another. This Board was not created to condone such arbitrary behavior.

By acting as it has and intends, BLM has not only rendered the Agreement a nullity, but contributed, however unwittingly, in keeping the Bank uninformed of the apparent fact that six of the deposits had already been withdrawn by Sexton, contrary to his express representation in the Agreement and implicit representation in the letters of instruction and withdrawal. 3/

Regardless of BLM's belief that the copy of the withdrawal letter was intended to be acted upon, as of May 31 it knew or should have known that the Bank was the sole possessor of the right to send that letter and the right to receive the deposits. If BLM had not ignored this, if it had not persisted in treating Sexton as the sole owner, and if it had not failed to send copies of its June 6 and June 28 letters to the Bank, it would have been

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1/ While BLM and the Board apparently feel that the letter copy should not have been filed unless it was intended to be acted upon immediately, its attachment as an exhibit thereto when such was clearly provided by the Agreement is not unreasonable.

2/ There is every indication from the record that BLM intended to return the deposits to Sexton, not the Bank.

3/ I do not intend by this to draw any pejorative conclusions, especially in light of his appeals to this Board and to the Court, as to Sexton's dealings with the Bank, but only to point out the apparent implications of BLM's failure to notify the Bank of its responses to the letter.

informed by the Bank well before its decision of August 6 that the letter was not to be acted upon, and this case would not have arisen. 4/

Finally, returning to Judge Fishman's opinion that BLM erred in acting upon the letter of withdrawal in the first instance, I would add an entirely different argument in support of his conclusion. If, as the majority holds, Sexton remained the sole owner of the offers and BLM could not recognize the Bank as an assignee thereof, the letter of withdrawal was a nullity, ab initio, and BLM committed reversible error in acting upon it at all. BLM knew or should have known by virtue of the Agreement and letter of instruction that Sexton and the Bank, however erroneously, intended and believed that the Bank had authority to withdraw the offers -- in order to protect its loan and contrary to Sexton's interest in continuing the life of the offers. Accordingly, as pointed out earlier, the Bank could not have been acting as Sexton's agent. Moreover, as the majority now recognizes and as BLM knew or should have known, the Bank -- not Sexton -- sent the letter of withdrawal. How then can BLM be justified in following a direction to withdraw lease offers submitted by a party having no interest in those offers and clearly not acting on behalf of the offeror?

If the Bank had no recognizable interest in those offers, and since it was not acting in Sexton's interest in withdrawing them, BLM behaved arbitrarily, capriciously and prejudicially to Sexton's interests in acting upon such letter of withdrawal. Nor can the majority take refuge in Sexton's subsequent silence. Sexton clearly assumed he had no power to control the Bank's actions in regard to the offers. And if a letter of withdrawal takes effect eo instante, as stated by the majority, Sexton was powerless to change BLM's subsequent actions regardless of his reactions.

4/ The majority is impressed by the fact that Sexton, having received the June 6 and June 28 letters, never responded. This can only be based on the majority's inability to understand that Sexton no longer had the right to withdraw those deposits. I can think of a number of reasons for Sexton's lack of response. The primary one is that Sexton, not knowing the Bank had not sent the original letter of withdrawal and believing correctly that he was bound by the Agreement, knew that he had no control over the deposits and could not object to the Bank's actions in withdrawing them.

If blame is to be apportioned between the parties and BLM, the latter possesses the lion's share. I would reverse the decision of August 6 and order the 18 lease offers reinstated.

Newton Fishberg
Chief Administrative Judge

I concur:

Amne Poindexter Lewis
Administrative Judge